# THE CORPORATION JOURNAL

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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

*The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation and maintenance of corporations, is to deal with members of the bar, exclusively.*

## SECURITIES ACT OF 1933

The Federal Trade Commission announced on September 22, 1933, the adoption of a rule under the Securities Act of 1933, which includes the matter quoted below. The naming, merely, of the person referred to confers the stated powers "unless there is an express statement to the contrary."

"All registrants shall hereafter confer upon the person designated in the registration statement as the person authorized to receive service and notice of all notices, orders, communications and other documents which may be issued by the Commission in connection with the registration statement,

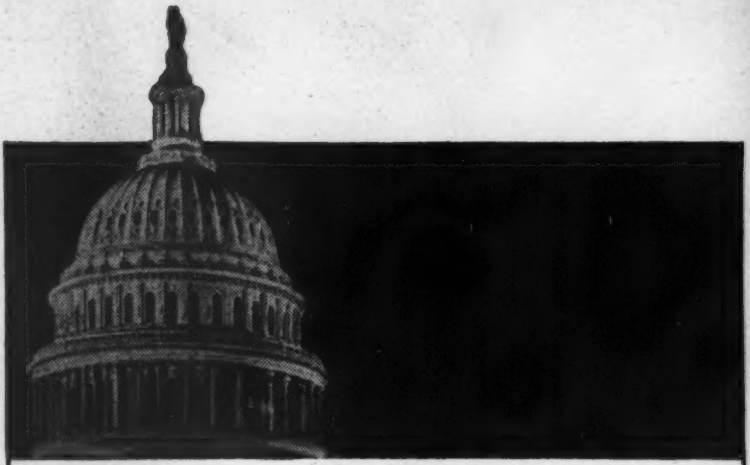
"(a) a power to amend the registration statement by altering to a subsequent date the date of the proposed offering of the securities for which the registration statement is filed; and

"(b) a power to withdraw the registration statement or all amendments thereto, or an amendment made by virtue of the power conferred in paragraph (a) above; and

"(c) a power to consent to the entry of an order issued under Section 8 (b) of the Securities Act, waiving notice and hearing, such order being entered without prejudice to the right of the registrant thereafter to have such order vacated upon a showing to the Commission that the registration statement as amended is no longer incomplete or inaccurate on its face in any material respect."

Kenneth Sutherland

*President.*



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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

## Contents for November

# Price Fixing

Chapter 158, New York Laws of 1933, an emergency measure enacted in the exercise of police power, regulates the dairy industry. The fixing of minimum prices for milk is one of the main features of the act. Milk has been selling too cheaply (emergency); the sale of milk at a low price is made a crime (remedy). Licenses to sell may be issued, refused, suspended, or revoked. In *People v. Nebbia* (262 N. Y. 259, 186 N. E. 694) the constitutionality of the act was before New York's highest court in a criminal case and was sustained, against the contention, among others, that the due process provision of the 14th Amendment, Federal Constitution, is violated because of interference with the dealer's right to carry on his business in such manner as suits his convenience. From the opinion: the power thus to regulate private business may be invoked only under special circumstances. We are accustomed to public utility rate regulation; rents have been regulated; compensation for injured workmen has been provided; preference to citizens as employees on public works has been upheld as have prevailing rates of wages for workmen on municipal contracts; usury laws are of an ancient house; protective tariffs are sustained; sugar bounties have not been declared unconstitutional; rates of grain elevators and cotton gins may be regulated; rate fixing in the insurance business has been upheld; the regulation of wages of railroad employees has been sustained; protection has been granted to producers of milk who must sell on credit. Contra: the right of private bargaining has been upheld—to defeat child labor laws; to prevent the fixing of wages in industry by an arbitration board; to invalidate a state law fixing the price of gasoline; to prohibit the regulation of the price of theater tickets by speculators; to invalidate a law to equalize prices of milk throughout the state; to regulate the fees of an employment agent. All these decisions (cited) are to be read in the light of surrounding circumstances. The United States Supreme Court has said that, although the abuses which grow up in connection with a business may afford a reason for regulating it, this is not enough to justify "the destruction of one's right to follow a distinctly useful calling in an upright way." Statutes aiming to establish a standard of social justice, to conform the law to the accepted standards of the community, to stimulate the production of a vital food product by fixing living standards of prices for the producer, are to be interpreted with that degree of liberality which is essential to the attainment of the end in view. We cannot place the stamp of invalidity on the measure before us because of want of "due process." With the wisdom of the legislation we have nothing to do. The policy of noninterference with individual freedom must at times give way to the policy of compulsion for the general welfare. In a dissenting opinion it is said that "the police power, although 'a dynamic agency, vague and undefined in its scope' cannot rise superior to the Constitution."

# Domestic Corporations

**California.**

**Dividend belongs to one who owns stock on date of payment, absent contrary mutual agreement, though he be not stockholder of record on stockholder-of-record date.** Question, here, is between buyer and sellers of stock, the corporation being out of the picture. Dividends declared on October 23, payable on or before November 29 to stockholders of record at the close of business on November 15, was paid on November 25. On November 12, 600 shares were sold by A and B to C; transfer not made on books until November 26. Dividends were paid to A and B. In an action by C to recover from A and B the amount of the dividends the defendants prevailed below. The California District Court of Appeal, Fourth District, reverses with instructions to the trial court to enter judgment for plaintiff as prayed for. The Court says: "We are satisfied by principle and by authority that the declaration of the dividends in question must be interpreted and given the effect which the directors evidently intended it should have, that is, that the dividends declared on October 23, 1930, belonged to the stockholders on the 29th of November, 1930, unless sooner paid to the stockholders, in which event it vested on the date payment was made. On November 25 the dividend was paid to defendants when plaintiff was, in fact, the owner of these shares. The unrecorded transfer was good between the parties and, therefore, the plaintiff had the right to the dividends as against the defendants." *Smith v. Taecker et al.*, 24 P. (2d) 182. Griffin & Boone and Edward T. Taylor, all of Modesto, for appellant. J. L. Taecker and Mary E. Taecker, for respondents.

**Delaware.**

**General appearance of trustees, as trustees, does not bring them before the court in their individual capacities.** Bill to declare void a voting trust agreement to which all the issued stock of a Delaware corporation is subject, and to recover on an alleged liability resting on the trustees. Constructive service, by publication, was made on the nonresident trustees, as such. Motion to vacate and to quash, on special appearance, is overruled by the Delaware Court of Chancery (New Castle County). We touch on but one ground of the several on which the motion was founded, that being as indicated by the caption hereto. The court says: "It would be a great injustice to the non-resident trustees to notify them to appear qua trustees for defending the issue of whether their alleged trust exists, and, after they had appeared, to tell them that they were also present in court as individuals and liable as such to respond to any decree that might be rendered against them for payment of money. * * * I shall regard the pending motion, therefore, on the theory that the case is one where the only relief sought by the bill, so far as the moving defendants are presently concerned, is a decree declaring the trust to be void." *Perrine v. The Pennroad Corporation et al.*,

July 19, 1933. Aaron Finger, of the firm of Richards, Layton and Finger, of Wilmington (Frank M. Swacker and Hugh F. O'Donnell, both of New York City, on the brief), for complainants. Hugh M. Morris and Ivan Culbertson, of Wilmington, for intervening complainants. Christopher L. Ward, Jr., of the firm of Marvel, Morford, Ward and Logan, of Wilmington, for moving defendants.

**Consolidation of two corporations by purchase of the assets of one by the other with share stock.** A Delaware corporation sold its assets to another corporation for shares of stock in such other corporation, all as authorized by and in accordance with the provisions of Section 64A of the Delaware General Corporation Law. Minority stockholders pray for relief appropriate to effect restoration of the status quo ante. The Court of Chancery of Delaware enters a decree dismissing the bill. Inadequate consideration and want of sufficient examination of the purchaser's affairs and assets to determine that it was expedient and for the best interests of the seller that the sale be made, were advanced. The agreement provided that three vice-presidents (holders of stock in the majority-controlling group) of the seller were to become directors of the purchaser; the three men became, also, vice-presidents of the purchaser (at same salaries)—self interest, etc., so that the transaction is vitiated by a fraud, so it was charged. The court says, as to the directorships: "But certainly that is a circumstance of no objectionable import"; and as to the vice-presidencies: "It would be a strange doctrine to assert that a sale of corporate assets is to be condemned as fraudulent on the bare showing that two or three responsible and presumably capable officers of the seller were, after the sale, engaged to render services for the purchaser similar to the services theretofore rendered by them to the seller at the same compensation which they had formerly received and which, so far as appears, was reasonable and theretofore fair." *Mitchell et al. v. Highland-Western Glass Co.*, 167 A. 831. Arthur G. Logan (of Marvel, Morford, Ward & Logan), of Wilmington, for complainants. Ivan Culbertson, of Wilmington (Hugh M. Morris, of Wilmington, on the brief), for defendant.

**Stockholder objecting to merger or consolidation of corporations must record his objection in writing prior to the vote on the question in order that he may later demand cash for his shares.** Section 61 of the General Corporation Law of Delaware provides that in the case of a merger or consolidation any stockholder "who objected thereto in writing" may demand payment for his shares under certain prescribed procedure not necessary to be recited. The question here decided is—may the written objection be made after the vote (as was done in the instant case) or must it be made before the vote is taken. The Supreme Court of Delaware, affirming the decree of the Chancellor, holds for the latter alternative, saying, after noting the difference between an assenting and a dissenting shareholder, that in determining this difference "regard must be given to that

**Delaware**—Concluded.

time when the consent or objection would be effective. This time when the consent or objection must be considered and the subsequent rights of the objecting stockholder established by virtue of his 'objection in writing' must be when the consolidation or merger is under discussion and so we are clear that for a stockholder to be entitled under the statute to the payment in cash for his stock, he must have objected in writing to the proposed merger at the time of the vote thereon." *Stephenson v. Commonwealth & Southern Corporation*, released August 11, 1933. John Biggs, Jr., and C. Stewart Lynch, of Wilmington, for appellant. James H. Hughes, Jr., and William S. Potter (of Ward & Gray), all of Wilmington, for appellees. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 96801.

**Action by receiver of Delaware corporation on an unpaid stock subscription evidenced by a promissory note.** A subscriber to stock in a Delaware corporation paying part cash, gave a promissory note, not in payment, of course, but as security for the payment of the unpaid portion of the subscription. Action by the receivers of the corporation on the note. The Court En Banc of Delaware (New Castle) holds that the suit cannot be maintained. The court emphasizes the distinction between an action by a going concern and by a receiver after insolvency, for the purpose of recovery for unpaid stock. It is held that the main or principal contract for the purchase of the stock is the subscription agreement, the note being accessory or collateral thereto; and so, there being no consideration for the note other than the subscription agreement a suit on the note is open to the same defenses as a suit on the subscription itself. The court says that "general principles of law as crystallized by Section 20 of the Delaware Corporation Law require that for the payment of creditors every stockholder may be compelled to pay on each share held by him and not fully paid for such sum as may be necessary to complete (the payment) or such proportion of that sum as shall be required to satisfy the debts of the corporation." However, here, "the debts of the company not having been ascertained and there being no showing that the assessment or collection of the unpaid subscription is necessary either for the payment of debts of the corporation or for the purpose of equalization among the stockholders"—the suit cannot be maintained. *Philips et al. v. Slocomb*, 167 A. 698. C. Stewart Lynch, of Wilmington, for plaintiffs. Everett Borton and James R. Morford, both of Wilmington, for defendant.

**New York.**

**Preferred shareholders' birthright and a mess of pottage.** Plaintiff's appeal from decree dismissing their bill and from an order denying a temporary injunction against payment of a dividend. The United States Circuit Court of Appeals, Second Circuit, affirms,

saying: "On the merits it is plain that both decree and order were correct. The purpose of the charter was to give a limited priority to Class A stock, which should end when any share or shares had received an aggregate of $1.60 in dividends. Although the provision is peculiar, it is not unlawful, and it is so plain that discussion cannot clarify it. The preferred shareholders appear to have been content to give up their birthright for this mess of pottage. Any who bought A shares thereafter were fully advised that their advantage ended when the original A shareholders had got what they bargained for. The charter was before them and they were charged with notice of its plain meaning." *Whitney et al. v. Puro Filter Corporation of America,* 63 F. (2d) 811. Frank R. Pentlarge and David C. Johnson, both of New York City, for appellants. Zalkin & Cohen, of New York City (Nathan Coplan and Barney Fensterstock, both of New York City, of counsel), for appellee.

**Oklahoma.**

**May a corporation recover usury in Oklahoma?** In a conditional-sales-contract acceptance-company case, involving the question of usury, one of the many questions decided was whether or not the Oklahoma usury law runs to corporations. The United States Circuit Court of Appeals, Tenth Circuit, which reversed the judgment of the district court for plaintiff, and remanded for a new trial, says, on this point: "Appellant further contends that a corporation may not recover usury in Oklahoma. Until the Supreme Court of Oklahoma holds to the contrary, we are of the opinion that under the liberal construction that must be accorded the statute (O. S. 1931, Sec. 9519), the word 'person' includes a corporation." *General Motors Acceptance Corporation v. Mid-West Chevrolet Co.,* 66 F. (2d) 1. Bruce McClelland, Jr., of Oklahoma City, and Anthony J. Russo, of New York City (Preston C. West and A. A. Davidson, both of Tulsa, and Pierce, McClelland, Kneeland & Bailey, of Oklahoma City, on the brief), for appellant. C. B. Stuart and Philip N. Landa, both of Tulsa, (E. J. Doerner and Hal Crouch, both of Tulsa, and Merrill S. Bernard, of Sand Spring, on the brief), for appellee. Villard Martin, of Tulsa, amicus curiae.

**Tennessee.**

**Judgment may not be avoided by denying existence of party with whom one has dealt.** Bill to enjoin enforcement of a judgment rendered by a justice of the peace in favor of West Nashville Ready-to-Wear Company, the trade name of a mercantile business carried on by an individual. Bill was dismissed below; the Supreme Court of Tennessee affirms. The court recites that plaintiff submitted to judgment; that he might have avoided the warrant by a plea of misnomer; that he cannot avoid the judgment by bill in equity; and says: "The name of the entity with which complainant contracted implies a corporation, and after submitting to a judgment on behalf of that entity for the debt he contracted and which he in substance

**Tennessee—Concluded.**

admits to be just, the complainant, after judgment, is estopped from denying the existence of the party with whom he dealt." *Cope v. Wilkinson et al.*, 59 S. W. (2d) 528. Robert L. Sadler, of Nashville, for appellant. Elkin Garfinkle, of Nashville, for appellee.

**Washington.**

**Fact that two corporations are owned and controlled, largely, by one individual does not cause him to be responsible for the obligations of either, or cause one of the corporations to be liable for the debts of the other.** The stock of each of two corporations was owned largely by a certain individual; each carried on a separate and distinct business; there was no intermingling of their affairs. Loans were made, in good faith, openly, and in the ordinary course of business, by one corporation to the other. In an action by a creditor of one of the corporations plaintiff sought to hold the individual and the other corporation personally liable for the amount alleged to be due. On appeal, from an adverse judgment, the Supreme Court of Washington affirms. The court finds no evidence of any facts tending to deceive or defraud anyone dealing with either corporation. "Mere common ownership of the capital stock, interlocking directorates, or like evidences of close association will not justify the courts in disregarding corporate entities. In order to justify the judicial disregard of corporate entities, one, at least, of two things must appear. Either the dominant corporation must control and use the other as a mere tool or instrument in carrying out its own plans and purposes so that justice requires that it be held liable for the results, or there must be such a confusion of identities and acts as to work a fraud upon third persons. In most, if not all, of the Washington decisions, in which corporate entities have been disregarded, both elements have appeared, and there is strong authority for the rule that both elements (if there be two) must appear in order to warrant relief." *Pittsburgh Reflector Co. v. Dwyer & Rhodes Co., Inc., et al.*, 23 P. (2d) 1114. Wright & Wright, of Seattle, for appellant. Greene & Henry, of Seattle, for respondents.

## Foreign Corporations

**Arkansas.**

**Selling in state of machine taken in exchange for machine sold in interstate commerce does not constitute doing business in state.** A machine was sold in Arkansas, in interstate commerce, by a corporation foreign to Arkansas, not licensed to do business in that state. In part payment an old machine was taken in exchange, stored in the state, and later, sold to an Arkansas customer, the purchase proposal being submitted to the corporation's home office by one of its traveling salesmen, and there accepted; cash, note and chattel mortgage; notes payable in Arkansas and mortgage there

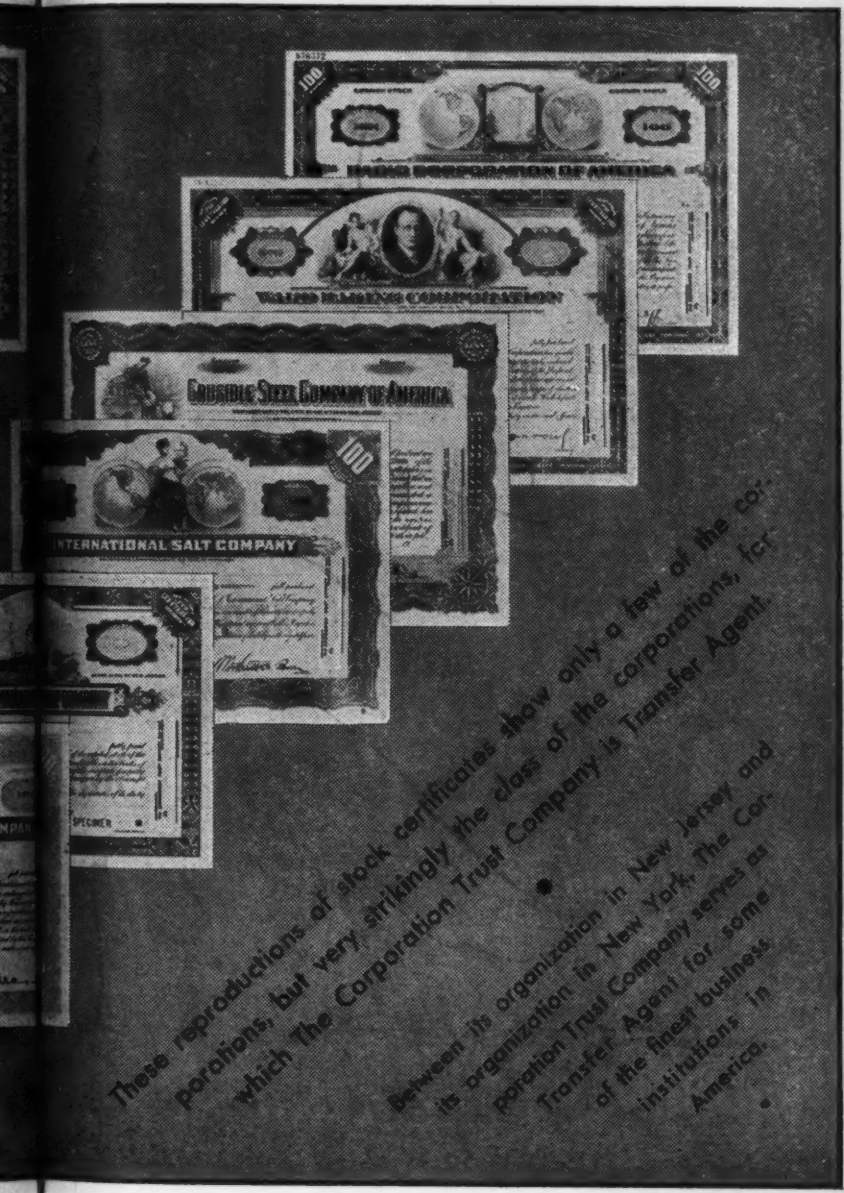
recorded. The Arkansas Supreme Court says that this transaction is an incident to the original interstate transaction and so the foreign corporation is not to be denied access to the state courts in a suit on the notes and mortgage on the ground that the contract was void and nonenforceable having been made by the corporation without first complying with the Arkansas foreign corporation laws. *Smith v. Mergenthaler Linotype Company*, 58 S. W. 686. John C. Ashley, of Melbourne, and Shields M. Goodwin, of Little Rock, for appellant. Fred A. Isgrig, of Little Rock, for appellee.

**California.**

**Action in California on contract made there against foreign corporation with fleet of ships having San Francisco as regular terminal port will lie and service on local manager is good, though business conducted is interstate and foreign, exclusively.** The defendant, a New Jersey corporation, not qualified in California, operates a fleet of vessels between San Francisco and Central and South American ports; it maintains two offices, with numerous employees, in San Francisco; has bank account there; seamen are paid there; ships are provisioned there; both freight and passenger business is solicited there; etc., etc., etc.; all under direction of the local manager. Action for damages on account of injuries received on one of the vessels, on the high seas, by a ship's storekeeper whose contract of employment was made in San Francisco; service of process on the manager. Motion to quash service for want of jurisdiction of the state court was granted below. The California Appellate Department, Superior Court, City and County of San Francisco, reverses. The court assumes "for the purpose of the decision that defendant's business in California is exclusively interstate and foreign in character." In closing the long opinion in which many cases are cited and discussed it is said: "We are satisfied * * * that the municipal court has jurisdiction of the subject-matter, and of the person of defendant, and that the exercise of assertion of that jurisdiction does not unduly or unreasonably burden interstate commerce." *Winfield v. United Fruit Co.*, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 96848.

**Servicing, by the seller, of engines sold in interstate commerce to California customers constitutes the "doing of business" in California by the seller.** As a result of complaint made concerning the functioning of an engine sold and delivered in interstate commerce to a customer in California, the vendor, a New Jersey corporation, not qualified to do business in California, sent a graduate engineer to the customer to condition the engine and compose the difficulty, if possible. It was announced that this representative was sent to California "to aid and assist the customers in California with the maintenance and service of engines theretofore delivered." He was authorized to employ mechanics whenever necessary to do this work. Subsequent to his arrival on the coast, by advertisement the


OTIS ELEVATOR COMPANY
SPECIMEN
SPECIMEN
ALPHA PORTLAND CEMENT COMPANY
TEXAS PACIFIC LAND TRUST




These reproductions of stock certificates show only a few of the corporations, but very strikingly the class of the corporations, for which The Corporation Trust Company is Transfer Agent.

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Between its organization in New Jersey and its organization in New York, The Corporation Trust Company serves as Transfer Agent for some of the finest business institutions in America.

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**California**—Concluded.

public was urged to see the company's representative (name and address being given) who would explain "why you should have a Standard Diesel." He had no authority to sign and execute contracts. In an action against the company service of process was made on this representative. If the company was "doing business" in California and the representative was a managing or business agent of the company the service was good, under the then law. The California Court of Appeals, Second Appellate District, affirming the judgment below, holds the service valid. *Milbank v. Standard Motor Construction Company*, 22 P. (2d) 271. Pacht, Pelton & Warne, of Los Angeles, for appellant. Andrews & Andrews, of Los Angeles (E. H. Blanche, of Los Angeles, of counsel), for respondent.

**Florida.**

**Unlicensed foreign corporation doing construction work in state may not enforce lien for labor and material in connection with such work even though the corporation subsequently qualifies.** Two Virginia corporations, not licensed to do business in Florida, engaged in the construction of a building in Florida. After completion of the work the corporations qualified under the Florida foreign corporation law. Subsequent to as well as prior to qualification notices of liens for labor and material furnished were filed. Suits instituted for foreclosure of liens. The Florida foreign corporation law does not (now) attempt to invalidate, in toto, acts within the state by an unqualified foreign corporation, but its contracts are unenforceable until a permit to do business shall have been obtained. Reversing the court below, to the extent of eliminating the adjudication of any lien in favor of the two Virginia corporations, the Florida Supreme Court says that there is nothing in the state foreign corporation law according to these corporations, though they qualified subsequent to the time when the labor and materials, sought to be covered by the liens, were furnished, the right to acquire and enforce liens for such labor and materials furnished at a time when they were not licensed. These are "not suits to enforce a contract." *Robert C. Hogue v. D. N. Morrison Construction Company, et al.*, decided June 23, 1933. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 94018.

**Louisiana.**

**Agent for service of process having been named by foreign corporation service on one other than the one named is without force.** An original plea to the jurisdiction, here, was filed and overruled. Thereafter, before issue was joined, another plea to the jurisdiction on the ground as stated in the caption hereto, was filed. It was urged that, under state decisions, by first excepting to the jurisdiction on grounds which were overruled a general appearance was made amounting to a waiver of the later plea. The United States District

Court, W. D. Louisiana, Shreveport Division, says that the matter of the jurisdiction of a Federal court is one controlled by Federal law and cannot be affected by rulings of state courts, if in conflict therewith. And then—"It thus appearing that the defendant, a foreign corporation, has named as agent for service of process in this state, to wit, its president, whose residence and domicile was within this district at the time of filing this suit, the service made upon Dowell, described in the return as 'Secretary-Treasurer,' was invalid." Plea sustained. *United States v. Frost Lumber Industries, Inc.*, 3 F. Supp. 1018. Philip H. Mecom, U. S. Atty., and J. Fair Hardin, Asst. U. S. Atty., both of Shreveport. Wilkinson, Lewis & Wilkinson, of Shreveport, for defendant.

**Minnesota.**

**Action in Minnesota courts against foreign corporation not engaged in intrastate business in state and having no office or agent there does not lie.** Action by a Delaware corporation licensed to do business in Minnesota, in a Minnesota court, against another Delaware corporation not licensed in Minnesota, with its principal office in Ohio, whose business is Great Lakes water transportation. No business is solicited in Minnesota. Cargo is discharged at Duluth, on occasion. Suit based on alleged negligent damage to a consignment, either while in storage in South Chicago or while in transit between Chicago and Buffalo. Service was made on the master of one of the company's boats when the boat was in Duluth harbor discharging cargo; at the same time levy was made on the ship under writ of attachment. Below, on motion of defendant, both the service and the levy were vacated, not because such, per se, were violative of the commerce clause of the Federal constitution but on the ground that the prosecution and trial of the action in St. Louis county (Duluth) was violative of such clause because of the unwarranted burden that this would impose on defendant to defend. The Supreme Court of Minnesota affirms (three justices dissenting), finding that the further prosecution of the action "would result in a serious and unreasonable burden on interstate commerce, and because plaintiff's corporate residence here as a domiciled foreign corporation is not sufficient to make the burden so imposed a reasonable one." *International Milling Co. v. Columbia Transportation Co.*, decided September 1, 1933. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 97229.

**Mississippi.**

**Foreign corporation authorized to do, and doing, business in state, but having appointed no agent for service of process, is denied access to the state courts to sue on notes taken in connection with such business.** The Mississippi law provides that a foreign corporation doing business in the state, whether domesticated or simply authorized to do business in the state, must designate either the Sec-

**Mississippi**—Concluded.

retary of State or another as its agent for service of process on it; failing, the right to bring or maintain any action or suit in any of the courts of the state is denied. Plaintiff-appellee, here, a New Jersey corporation, was duly qualified to do business in Mississippi; it had not designated an agent for service of process. It entered into selling agency agreements with parties in Mississippi; warehousing its materials; selling; installing; servicing; etc. It was found that certain restrictions on the "agency" on acting on behalf of or in place of the foreign corporation had been waived so that in effect the acts of the "agency" in some regards were the acts of the foreign corporation; and otherwise it was found that business and business that it was authorized to do, was being done by the foreign corporation in the state. The Mississippi Supreme Court reverses the court below and enters judgment dismissing the cause. "While the particular application of this statute may be harsh, the provision is mandatory, and we cannot do otherwise than enforce it." *Wiley Electric Company of Jackson, et al. v. The Electric Storage Battery Company*, 147 So. 773. Howorth & Howorth, of Jackson, for appellants. R. H. & J. H. Thompson, of Jackson, for appellee.

**New York.**

**Preoperation activities including attempts to sell stock does not constitute "doing business" by foreign corporation but is sufficient to validate service of summons.** So holds the New York City Court, Bronx County, Special Term, Part 1. The service was made in New York City on the president of a recently organized New Jersey corporation, a resident of the city of New York. Plaintiff had been engaged by the president, in New York, as an employee of the corporation; no regular business had been done; no title to property had been taken; stock sale activities had been engaged in. The court says: "The defendant has not done any systematic business in any state, and has made a contract with the plaintiff in this state. Its president resides here and all its promoting has been done principally in this state. The motion to set aside the service of summons is denied." *Swasey v. Knopf*, decided July 21, 1933. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 96900.

**If unqualified foreign corporation is not doing business in state at time of service of summons such is without force.** This is an action on a contract made in New York, brought by an Ohio corporation against a West Virginia coal mining corporation which has not qualified to do business in New York, and does no business there except to the extent indicated below. Summons on behalf of the defendant was served in New York on its president who is also president and principal stockholder of a New York corporation actively engaged in New York in the business of selling coal which it buys from various coal operators, including the defendant. The

New York corporation owns no stock in the West Virginia company, and the latter owns no stock in the former. The relationship between the two companies is ordinarily that of buyer and seller; there is no sales agency or other agreement between the two, although the buyer takes approximately one-half of the coal mined by the seller. In connection with the contract here involved there were communications and actions tending to show that at that particular time and for that particular purpose, an agency status existed between the New York and the West Virginia corporations. The United States District Court, Southern District of New York, to which the cause was removed from a New York State court, grants the motion to set aside the summons and to dismiss the complaint which motion was on the ground that the court is without jurisdiction of defendant inasmuch as the corporation is not engaged in business in New York. The court says: "Whatever doubt there may be with regard to defendant's amenability to process in New York in 1930 and 1931, it is clear that defendant was not subject to the jurisdiction of this court on January 4, 1933, the date on which summons was served." *The North American Coal Company v. Leccony Smokeless Coal Co.*, decided June 5, 1933, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 92519. Hannon & Evans (Charles F. Evans and Jerome T. Nolan, of counsel), all of New York, for plaintiff. Chadbourne, Stanchfield & Levy (Horace G. Hitchcock, of counsel) all of New York, for defendant.

**Oklahoma.**

**Going into state to purchase goods for shipment to point outside of state does not constitute "doing business" in state.** In an action on a contract a corporation, foreign to Oklahoma and not qualified to do business in that state, against another foreign corporation qualified to do business in Oklahoma the plaintiff prevailed, below. One defense advanced was that plaintiff should not have access to the state courts due to the fact that it was doing business in Oklahoma, without license. One who was acting as agent for the plaintiff placed, in Oklahoma, an order for several thousand barrels of crude oil to be loaded into cars to be furnished by plaintiff, for transportation to a point outside of Oklahoma. This (and other similar buying orders) is what was contended to be "doing business" within the state. The Oklahoma Supreme Court affirms the decision of the court below. The court, relying on *Dahnke Walker Milling Co. v. Bondurant*, 257 U. S. 282, says that plaintiff is entitled to bring the action without complying with the foreign corporation laws of Oklahoma as there was no doing of distinctly local business since "a contract to purchase the crude oil and negotiations preliminary thereto were incidental to the act of interstate commerce involved." *Consolidated Pipe Line Co. v. British American Oil Co., Ltd.*, 21 P. (2d) 762. Poe, Lundy & Morgan and H. R. Duncan, all of Tulsa, for plaintiff in error. Rollin E. Gish and Biddison, Campbell, Biddison & Cantrell, all of Tulsa, for defendant in error.

**Pennsylvania.**

**Delaware corporation ousted from Pennsylvania because of carrying on in Pennsylvania of a business in which it is not authorized to engage under its charter.** Quo warranto proceeding by the Commonwealth of Pennsylvania. Defendant is a Delaware corporation incorporated for the purpose of engaging in the real estate business and registered, for a like purpose, in Pennsylvania; it admits that it is not authorized to operate as an insurance company. The question was whether or not the defendant was engaged in the insurance business in Pennsylvania. The court below found that it was and entered a decree for the State. On appeal the Supreme Court of Pennsylvania affirms. The court says: "As appellant was clearly engaged in the business of insurance without power by its charter to do so, the learned court below was right in entering judgment for the Commonwealth, entirely apart from appellant's failure to comply with the insurance law, which of itself would sustain the judgment, if appellant had possessed the power to engage in insurance." *Commonwealth v. Fidelity Land Value Assurance Co.*, 167 A. 300. Harry Shapiro, of Philadelphia, for appellant.

**Tennessee.**

**Contracting for and doing isolated road construction job does not constitute doing business in state.** Action brought in Federal District Court of Alabama against a surety company on account of road construction work done in Tennessee, under a subcontract, by an Alabama corporation. One defense—doing business in the state without being licensed. The United States Circuit Court of Appeals, Fifth Circuit, on appeal, says that it is not necessary to find whether or not the plaintiff was licensed to do business in Tennessee, since, though "considerable time was required to perform the subcontract, it was an isolated transaction, and appellee had not entered the state for the purpose of continuously doing business." The court cites a decision of the Tennessee Supreme Court before the enactment of the 1929 Act now controlling, in *Richmond Screw Anchor Co. v. Minter Co.*, 156 Tenn. 19, 300 S. W. 574, wherein it was held that domestication was not essential under such conditions, and then says that "so far as we are advised, the Supreme Court of Tennessee has not had the occasion to construe the 1929 Act, but we find nothing in it that would compel a conclusion to the contrary. We are content to follow the above-cited decision, particularly as it conforms to the general rule adopted in Federal courts." *Consolidated Indemnity & Ins. Co. v. Salmon & Cowin, Inc.*, 64 F. (2d) 756. M. C. Stewart and F. M. Young, of Birmingham, Ala., for appellant. W. S. Pritchard and J. A. Aird, of Birmingham, Ala., for appellee.

**Texas.**

**Right of unlicensed foreign corporation to litigate its lawfully acquired property rights.** A Delaware corporation brought suit in

a Texas court on a subject-matter which it had acquired from a Massachusetts corporation which was licensed to do business in Texas at the time of the transactions involved in the suit. Judgment for plaintiff. It was contended, inter alia, on appeal, that a foreign corporation, when duly challenged, must not only plead but prove its permit to do business in the state as a condition precedent to its right to maintain a suit, and that, failing, a judgment of dismissal alone is authorized. Though it was sufficiently established, apparently, that the Delaware corporation had been granted a permit to do business in Texas, the Court of Civil Appeals of Texas (Eastland), affirming, says: "The plaintiff acquired the subject-matter of the suit from a Massachusetts corporation, plaintiff's predecessor, which according to the undisputed testimony, had a permit in Texas at the time the business transactions were had which are involved in this suit, and the plaintiff therefore had a right, in any event, to litigate its lawfully acquired property rights." *Peurifoy et al. v. Hood Rubber Products Co.*, 59 S. W. (2d) 428. Davidson, Doss & McMahon, of Abilene, for appellants. Kirby, King & Overshiner, of Abilene, for appellee.

## TAXATION

**Delaware.**

**New Jersey receivers of an insolvent Delaware corporation directed to allow Delaware's claim for two annual franchise taxes, one due before insolvency and the other thereafter.** A Delaware corporation, doing business in New Jersey and having its plant and equipment in that state was adjudged insolvent and statutory receivers were appointed—May 4, 1931. Delaware's claims for franchise tax for 1930, due April 1, 1931, and for such tax for 1931, due April 1, 1932, were disallowed, not only as preferred claims, but also as general claims. The Court of Chancery of New Jersey, considering *State v. Surety Corporation of America*, 162 A. 852 (Court of Chancery, Delaware) dispositive of the question, reverses the determination of the receivers with directions to allow the claims as preferred claims. The franchise tax or fee is noted to be a charge for the privilege of existing; it is, when due, a debt due the state; as corporate existence persists though insolvency and receivership have supervened, the franchise tax liability persists as well. *Standard Embossing Plate Mfg. Co. v. American Salpa Corporation*, 167 A. 755. McCarter & English, of Newark, for claimant-appellant. Israel B. Greene and Harry Phillipson, both of Newark, for receivers-appellees.

**Illinois.**

**Issued stock later exchanged and canceled is not to be considered in determining basis for annual franchise tax on issued stock though no reduction of capital effected by charter amendment, under circumstances here outlined.** Under Illinois law a corporation may

**Illinois**—Concluded.

sell all of its assets with the consent of two-thirds of all of the outstanding capital stock. Appellant Illinois corporation did so, selling to another corporation, the consideration being a large number of the shares of stock of the vendee corporation, a large block of its own stock held by the vendee to be surrendered for cancellation, the assumption by the vendee of the vendor's indebtedness and the cancellation of the vendor's indebtedness to the vendee. The vendor then gave its stockholders the opportunity to turn in their shares for cancellation in exchange for shares of the vendee company accepted in exchange for the assets, as stated. All except a small number of the vendor's shares were exchanged and canceled, and the vendor ceased to do business. "The transaction was entirely free from fraud or objection of any kind and was for the best interest of all concerned." No reduction of capital was effected by charter amendment. The Illinois annual corporation franchise tax is based, primarily, on issued capital stock. Reversing the court below the Supreme Court of Illinois sustains the contention of the vendor corporation that its tax should be based on the small number of as yet unexchanged shares, these representing, so it urged, the total of its issued stock, and holds untenable the state's contention that "once a corporation issues stock it thereafter shall remain issued for the purpose of fixing the annual franchise tax until the charter is amended, or the corporation is dissolved." The court says that "this position is untenable in view of the specific power conferred by the statute authorizing corporations to exchange or sell all of their corporate assets. * * * no amendment to its charter was required." *Majestic Household Utilities Corporation v. Stratton*, 186 N. E. 522. Jones, Addington, Ames & Seibold, of Chicago (Albert F. Mecklenburger and Sidney Neuman, both of Chicago, of counsel), for appellant. Otto Kerner, Atty. Genl. (B. L. Catron, of Springfield, of counsel), for appellee.

**Iowa.**

**Foreign corporation interstate commerce pipe-line permit, annual license fee, etc., law held unconstitutional.** The Supreme Court of Iowa, affirming the judgment of the court below, holds Chapter 383-D 1 of the Iowa 1931 Code unconstitutional in its application to a foreign corporation operating a pipe line across a small portion of the state going over or under both public and private lands, railroads, rivers and creeks, because of its permit, annual license fee, and other provisions placing a burden on interstate commerce. *Board of R. Com'rs. of Iowa v. Stanolind Pipe Line Co.*, 249 N. W. 366. J. H. Henderson, Commerce Counsel, and Stephen Robinson, Asst. Commerce Counsel, both of Des Moines, for appellant. Parrish, Cohen, Guthrie & Watters, of Des Moines, and G. H. Woodward, of Tulsa, Okla., for appellee.

### CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

The Atlas Lumnite Cement Company
American Hide and Leather Co.
Pacific Eastern Corporation
Lerner Stores Corporation
The Carpenter Steel Company
Century Circuit, Inc.
Ridder Brothers, Incorporated
Associated Rayon Corporation
American Austin Car Company
Consolidated Investors, Inc.
The Greyhound Corporation
Good Humor Corporation
Southern Pacific Railroad Company of Mexico
Industrial Banking Corporation of America
Transcontinental and Western Air, Inc.

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## Some Important Matters for November and December

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January. —Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax on Business Corporations due on or before January 1.—Domestic and Foreign Business Corporations other than realty and holding companies.

Supplementary Franchise Tax Return due on or before November 30.—Domestic and Foreign Corporations organized or qualified between June 30 and November 1 of current year.

UNITED STATES—Fourth Installment of Income Tax imposed for the calendar year 1932 due on or before December 15.—Domestic corporations and foreign corporations having an office or place of business in the United States.

# The Corporation Trust Company's Supplementary Literature

*In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:*

**Securities Act of 1933**—Complete text of this important new law which constitutes in effect a National Blue Sky Law.

**Rules and Regulations for Administration of the Securities Act**—as promulgated by the Federal Trade Commission July 6, 1933. The initial and tentative rules and regulations under the new law, together with type reproduction of Form A-1 for registration statements.

**Special Report**—The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

**Amendments to Delaware Corporation Law, 1933.** Presents the complete text of the 1933 amendments to Chapter 65 of the Revised Code, all new matters being shown in italics, and repealed matter in brackets, so a complete picture is conveyed of the changes effected, while explanatory comments show the purpose and result of each change.

**What Constitutes Doing Business.** (Revised to March 1, 1933.) A 314-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic.

**Amateur Corporate Representation.** A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

**Delaware Corporations.** Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1933.

**When Corporations Cross the Line.** A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

**Questionnaire on Business Outside State of Organization.** This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

**Why a Transfer Agent?** The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.